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Creek Nation of Indians.

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Report No. 826.

[To accompany bill H. R. No. 643.]

HOUSE OF REPRESENTATIVES.

CREEK NATION OF INDIANS.

AUGUST 8, 1848.

Mr. BARRINGER, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the memorial of the Creek Indians, report:

That the most important claim of the memorialists is for the payment of \$141,055 91, the balance left of \$250,000, which was reserved, by the treaty of Indian Springs, made on the 8th of January, 1821, out of the price of lands ceded, to pay such claims of citizens of Georgia as should be established under the arbitration of the President. To understand the nature of this claim, it is necessary to make a succinct statement of historical events preceding and succeeding the treaty.

From 1774 to 1802, the period within which the claims of citizens of Georgia arose, the Creek nation was engaged in frequent hostilities with the people of that State. Before the formation of the present federal government, these wars were conducted by Georgia in her own independent capacity, and she made three treaties of peace with the Creeks between 1783 and 1790, viz: at Augusta, 1st November, 1783; at Galphinton, on the 12th of November, 1785; and at Shoulderbone, 3d November, 1796.—[Attorney General's Opinions, 626, 627.] In all these treaties the Indians stipulate to "restore all negroes, horses, cattle, and other property taken from the citizens of Georgia." In the two first, they make assigns of land, for which no consideration is stated. There were subsequent violations and hostilities, which, continuing until after the organization of the present federal government, were adjusted by two treaties between the United States and the Creeks: the first

at New York, 7th August, 1790, and the second at Colerain, on the 29th of June, 1796. In these treaties the Creeks stipulated, substantially, in the same words, "to restore all white inhabitants and negroes who are now prisoners in any part of the nation." It is further stipulated in the first, or New York treaty, that they make large cession of their lands."—[Attorney General's Opinions, 626 to 628.]

In that of Colerain, they cede all their claims to the lands ceded by the Choctaws and Chickasaws by the treaties of "Hopewell and Holston."—[Ibid, 629.]

In both treaties it is stipulated that "all past grievances and animosities shall cease."

A third treaty was made at Fort Wilken, on the 16th of June, 1802, which has been slightly connected with this matter, and is therefore now explained so far as necessary. Other hostilities subsequent to the treaty of Colerain having occurred, and aggressions being committed, the Creeks agreed to cede other lands to the United States, who agree to pay \$5,000 out of the price to satisfy claims for property taken by them since the treaty of Colerain.

Although these claims are not chargeable on the \$250,000 reserved in the treaty of Indian Springs, yet a small portion of those claims have been admitted and settled out of it by the award of President Monroe, for which there is no evidence of the assent of the Creek nation. But this is now referred to only as a part of the history of the transactions, and not because they express any intention to controvert or disturb the decision. It affords, however, another incident, like many others in this case, which prove that, in all measures taken under this treaty, every departure from its provisions have been in the favor of the white claimants, and adverse to the Indians.

By articles of agreement entered into between Georgia and the United States on the 24th April, 1802, the latter, as part consideration for the cession of that part of said wild lands now comprised in the limits of the States of Alabama and Mississippi, bound themselves to extinguish the title of the Indians to the lands occupied by them within the limits of the State of Georgia. From that time this obligation of the United States was, at various periods, pressed upon their attention by the State of Georgia, as was also the claims of her citizens for negroes and other property which she alleged had been taken by the Indians, and which, although they had stipulated in the various treaties enumerated above, had never been restored or paid for by the Creek Indians. The urgency of Georgia was such, in 1820, that Congress appropriated \$30,000 for holding treaties with the Creeks and Cherokees, to satisfy the wishes of that State; and commissioners on the part of the United States, and also on the part of Georgia, met the Creek head-men and chiefs in council at the Indian springs, in the latter part of December, 1820. At this meeting the commissioners of Georgia delivered, on 28th and 29th December, several talks to the Indians, head-men and chiefs, [Appendix A,] among whom was General William McIntosh, in which they set forth claims to a large amount, (said to be

\$280,000) for negroes and other property captured or destroyed by the Indians from 1773 and 1803, which they alleged that the Indians had not returned or paid for, as they were bound by the treaties of Augusta, Galphinton, Shoulderbone, New York, and Colerain to have done. For these they demand in payment [see State Papers, 2d vol., Indian Affairs, p. 252.] To this demand the chiefs answered, through their head chief, General McIntosh, [see State Papers, Indian Affairs, 2d vol., p. 253.] They declare that they have fully and faithfully executed all the previous treaties, as far as they know and have been able to do so. They deny the validity of the account rendered, or their liability for it; and especially do they deny any liability to pay for *any property destroyed in war*, or for any other than that stipulated for in the last treaty on these subjects, viz: that of Colerain. They state their points so explicitly that it is best presented in their own words. They say:

"At the treaty of Colerain a similar account with that now exhibited was presented by Gen. James Jackson, and the chief *then refused to acknowledge it*, except so far as the items therein contained were embraced in the treaty of New York, *in which no other property is promised to be restored than negroes and prisoners*. In further continuation of this talk, General McIntosh declares that the Indians have also many claims against the white people. He does not think this is the right way to settle them, but is willing to refer *all the claims*, on both sides, to *his father and protector*, the President of the United States."

To this proposal the Georgia commissioners assented, saying:

"Brothers: We know that a final adjustment of these things is extremely difficult, and for the purpose of avoiding all causes of animosity between us, who are neighbors and friends, we agree to your proposition to submit *all our claims, on both sides*, to our common father, the President, *whose decision we will conform to on our part*, and hope there may never more be any cause of difference between us.

"Brothers: It only now remains for us to repeat, that *we assent to the mode proposed by you* for settling these differences, and accordingly *will now present an agreement to be entered into between us*, which will put an end, we hope, to all discontents." [See State Papers, Indian Affairs, 2d vol., p. 253.]

In the paper prepared and presented by the commissioners of Georgia, in accordance with their talk above recited, it was agreed "that all the talks had upon the subject of these claims, *at this place*, together with all the claims on either side, of whatsoever nature or kind, prior to the act of Congress of 1802, regulating the intercourse of the Indian tribes, with the documents in support of them, shall be referred to the decision of the President of the United States, by *him* to be decided upon, adjusted, liquidated, and settled, in such manner, and under such rules, regulations, and restrictions as *he shall prescribe*: Provided, however, if it should meet the views of the President of the United States, it is the wish of the contracting parties that the liquidation and settlement of the aforesaid claims shall be made in the State of Georgia, at such

places as he may deem most convenient for the parties interested; and the decision and award thus made and rendered *shall be binding and obligatory upon the contracting parties.*"

On this agreement being signed, the Creek chiefs consented to a treaty, by the first article of which they ceded a very large tract of the best land of their nation, lying within the limits of Georgia, for \$450,000. Of this tract of country thus cheaply purchased for Georgia, the commissioners in their report of 9th January, 1822, [State Papers, Indian Affairs, vol. 2, p. 254] enclosing the treaty, [Appendix B,] say:

"We must believe that no tract of country of equal extent within the Indian boundary is as fertile or as desirable as the one now ceded." Again: "The quantity, &c., &c., is little, if any, short of 5,000,000 acres, for which, you will perceive by the treaty, we have engaged the government to pay \$450,000." And, again, speaking of its value, they add, "We believe the whole amount would only be a fair and reasonable consideration for the cession." It was further stipulated between Georgia and the Creek nation that the former should execute a full and entire release to the latter for all and every one of the claims so referred to the President; which was done.

These several points were embodied in the fourth article of the treaty, the first clause of which fixes the payment of \$200,000 direct to the Creek nation; and the latter clause covers these points in the following words: "And, as a further consideration for said cession, the United States do hereby agree to pay to the State of Georgia *whatever balance* may be found due by the Creek nation to the said State, whenever the same shall be ascertained, *in conformity* with the reference made by the commissioners of Georgia and the chiefs, head-men and warriors of the Creek nation, to be paid in five annual instalments, *without interest*, provided the same shall not exceed the sum of two hundred and fifty thousand dollars; the commissioners of Georgia executing to the Creek nation a full and final relinquishment of all the claims of the citizens of Georgia against the Creek nation for property taken or destroyed prior to the act of Congress of 1802, regulating the intercourse with the Indian tribes."

It thus appears by the foregoing facts, that the Creek nation agreed and bound themselves to and with the commissioners of Georgia and the United States by compact and by treaty:

1. To cede for \$450,000 near 500,000 acres of land;
2. That \$200,000 of the consideration money was to be paid to themselves directly;
3. That the remaining \$250,000 should be a fund out of which to pay citizens of Georgia for claims which should be awarded by the President not exceeding \$250,000;
4. That Georgia in her talks at Indian springs insisted that the claims to be paid were not only for property *taken away* and not returned, but for property *destroyed* also by the Indians;
5. That the Creek nation, by General M. McIntosh, its head chief, denied the validity of these claims, except those arising out

of the treaties of New York and Colerain for the restoration of "negroes and prisoners;"

6. That the Creeks, especially, denied their liability for property "destroyed" in the war;

7. That they proposed to refer all the claims on both sides to the award and decision of "their father and protector—the President of the United States:" *to no other person or tribunal;*

8. That this proposal was accepted, and by the articles of agreement, duly signed between the commissioners of Georgia and the chiefs; all the talks and all the claims on either side, "with the documents in support of them, were referred to the President of the United States, by him, and no one else, to be decided upon, liquidated, and settled, in such manner and under such rules, regulations, and restrictions as he should prescribe;" which agreement became a part of the 4th article of the treaty, whereby the United States became bound to all the conditions imposed by it and the agreement aforesaid, as fully as the Creek nation or Georgia were bound;

9. And that, finally, the President, Mr. Monroe, was constituted *the sole arbitrator* between the Creek nation and citizens of Georgia, and as such, and only by virtue of the authority in the treaty, was invested with power to make an award and decision on the claims in dispute between the parties, which should be binding and final between them.

The facts being clearly established as set forth above, the next point of inquiry is as to the manner in which these stipulations of the treaty have been carried into execution.

The President, Mr. Monroe, assumed the trust, and, taking the subject into grave consideration, appointed Geo. Jas. Preston, of Virginia, a commissioner to examine into and report to him on the claims of the citizens of Georgia; prescribing the "rules, regulations, and restrictions" under which he should conduct the commission. These rules and regulations are clear and explicit, and strongly sustain the views submitted by General McIntosh, when he and the Creek chiefs answered the talk of the commissioners of Georgia. Under these instructions the claims were examined at Athens, in Georgia, when the commission sat for eight months for that purpose; and the report of the commissioner at Athens on the 15th March, 1822. The commission was again further opened and extended at the earnest instance of Georgia, and Stephen Pleasonton, esq., Fifth Auditor of the Treasury, was directed to re-examine such claims as should be presented. He made two reports, one on 9th September, 1823, and the last in 1825.

On these reports, the President, Mr. Monroe, made his full and final decision and awards, adjudging and deciding claims in favor of citizens of Georgia to the amount of \$108,944.09, and leaving, of the \$250,000 reserved to meet them when thus ascertained by him, a balance in his hands of \$141,055 91.—[Appendix C.]

[See Doc. House Representatives, No. 128, 1st session, 20th Congress, and Ex. Doc. House Representatives, No. 268, 1st session, 20th Congress.]

In regard to these awards, it is to be remarked that they are the awards and decision of the arbitrator chosen by both parties, and that the Creek nation have never contested their validity, but always regarded them as final, conclusive, and binding on both parties; admitting that the whole subject had been referred, by their agreement and the treaty, to the President alone, with the fullest powers over it. They contend, with a strong support of reason, that if either party had cause to complain of the proceedings of the arbitrator, it was themselves, and not the white claimants; because it is very apparent, in the whole proceedings, that on every point in the investigation of these claims, in admitting evidence to support them, in fixing the values of the property, the practice adopted by the commissioner, was most favorable to the claimants, and most adverse to the Indians. The examinations were ex parte to the claimants; the property appears to have been valued very high, and the evidence was of a very imperfect character. In fact, it appears from his own report that \$10,926 15 were awarded in sixteen claims, where the commissioner states there was "no evidence" at all.

Three of these cases are copied from the report as samples, viz: In Ex. Doc. H. R., No. 268; 1st session, 20th Congress, page 47, are three cases, as follows:

1. James Johnson, sr.: 500 cattle, 3 horses, &c., \$3,080. Commissioner reports: "There is no evidence in support of this claim. It is, however, one of very long standing, and appears to be entitled to a favorable consideration. It is therefore reported to the President as a fair claim."

2. James Gray: for two sums of money, to wit, 47 and 165 pounds sterling, (\$908 57.) Report: "this can hardly be considered a *fair claim*; it is, however, reported to the President for his opinion."

3. Samuel Whatty: 2 horses, \$189. "This claim is without evidence in its support, but is considered a fair claim, and is reported to the President for his special decision." [Opinion of Attorney General, 419; ib. 649.] The price of the property is fixed, it is believed, at near or quite double its value; thus, 88 negroes of all sorts are valued at \$32,201, or \$365 80 each; and 471 horses and colts at \$41,171, or \$97 41 each. No credit appears for any that were dead or returned, or that could not be found. No opportunity was given the Indians to contest these claims, to produce counter proof and to establish their own claims in discount. [See Attorney General's opinions, 626.] Yet with all these advantages the claimants only established, under the award of the President, \$108,944, leaving of the price agreed to be paid for the lands a balance of \$141,055 91. [Appendix E.] This balance they claimed by John Crowell, their agent, on the 18th November, 1828, [see Ex. Doc. No. 80, H. R., 2d sess. 20th Congress,] and repeatedly since, and they still urge their right to it.

It also appears that this balance of \$141,055 91 remained in the hands of the government to the end of the administration of President Monroe, through all that of President Adams, and all of the first and a considerable portion of the last term of President Jack-

son. That during this time the award of President Monroe controlled the fund, and kept it from being paid to the Georgia claimants, who contended that the President had full power and authority to open the award and to pay it to them. President Monroe, in 1822, submitted to Mr. Wirt, the Attorney General, the questions and claims urged by these Georgia claimants, and his opinion was adverse to their pretensions. [Opinions of Attorney General, 614, -21.] In 1828, President Adams, on the said claims being again urged, submitted the subject again to Mr. Wirt, who gave a strong and elaborate opinion that the whole matter had been fully and finally adjudicated and settled by the award of President Monroe; and that President Adams had no further power on, or authority over, the subject. [Ib. 618 to 653.] To take the power to open the award, would be to assume what would unsettle every Executive act, and imply a right in every President to go back and review, reverse, and settle anew all acts done by his predecessors, &c. [See Opinions Attorney General, 621.] This opinion was also an elaborate review of the claims in all their bearings, and was decidedly against their right in law and equity, and in favor of the rights of the Indians.

Failing to obtain from President Monroe or President Adams or President Jackson, the reversal of these awards and decisions of the arbitrator, the applications were transferred to Congress.

From 1828 to 1834, every Congress was urged to re-open the awards of President Monroe, and to re-examine and re-adjudicate on the claims that had been finally and fully decided by him, as referee, and who was the only and sole tribunal, or power, to which they contend the Creeks had ever consented to submit the arbitration, or who could, rightfully, take any control over the case; but, notwithstanding, the Creek nation protested, by a memorial, [see doc. 56, H. Reps. 1st sess. 22d Cong.,] and an act was passed by Congress on the 30th June, 1834, [sec. 4, St. at Large, 721,] authorising the President to cause to be adjusted and paid, full indemnity, all claims of the citizens of Georgia, under the 4th article of the treaty, 8th January, 1821, under which act the whole balance was paid to the governor of Georgia, on the 2d March, 1835.—[See appendix D.]

The right to pass such an act is denied, and protested against, by the Creek nation. They deny that Congress had any rightful control over the subject; that the only right to appropriate any part the money agreed to be paid for the lands ceded by the treaty of Indian springs was derived from the treaty itself, and that was given to the President alone; that, in making his award, *he had fully exercised and exhausted all the power given to him by the treaty*; and that he had no other power, or right; and that the whole balance was theirs, and theirs only, and could not be taken from them without violating the treaty.

It seems to be clear, that the balance of \$141,055 91 did not belong to Georgia. It then belonged to the Creek nation, or to the United States; if to the former, it is still due to them, and unpaid; but if to the United States, then the present applicants have no

right. The solution of this question depends on the construction of the treaty; and in construing that treaty, what shall be the rules, or principles, adopted?—shall it be construed strictly, against either party?—or with indulgence and favor to either? Let it be borne in mind, that on the one side are commissioners highly educated, and qualified for diplomatic negotiations; and on the other, a people, whose language is foreign, and who are comparatively ignorant and uneducated; and, above all, are not skilled in the writing, or framing, or construing of legal instruments. Let it also be borne in mind, that the agreement under which this controversy has grown up, was framed and presented by the commissioners of Georgia, at the Indian Springs; and there can be but little doubt that the construction should be as liberal and considerate for the Indians, as is consistent with equity and justice. Let it also be remembered that, in their helplessness and dependence, they relied solely for justice, when they agreed to submit all these controversies to his decision—on the *President alone*, whom they style their “father and protector.”

“In the interpretation of a treaty (says Vattel, page 247) or any other deed whatever, the question is to discover what the contracting parties have agreed upon; to determine precisely, on any particular occasion, what has been *promised and accepted*; that is to say, not only what *one* of the parties *intended*, but also what the other must candidly and reasonably have supposed to be promised to him, what has been declared to him, and what must have influenced his acceptance. Every deed, therefore, and every treaty must be interpreted by certain fixed rules, calculated to determine its meaning as *naturally understood* by the parties concerned, at the *time* the deed was drawn up and accepted.”

“In an instrument of this sort (treaty) made with such persons as the Choctaws, I do not think that strict and technical rules of construction should be applied to it. It ought to be expounded liberally according to the intent.”—[Opinions Attorney General, (Taney,) 843.]

In Worcester or State of Georgia, 6 Peters, 575, the supreme court say: “The language used in treaties with Indians ought never to be construed to their prejudice. * * * * How the words of the treaty were understood by this *unlettered people* (the Choctaws) rather than their actual meaning should form the rule of construction.”

Judged by these principles, can there be any question as to the fair interpretation of the 4th article of the treaty? The Indians consider, in all cases, their talks to be part of the treaty. In this case they stipulated in their agreement of arbitration, that their talks shall go along with the claims submitted to the President; for what purpose? As evidence that they deny the claims and seek to reduce their amount. And why deny them to seek to reduce their amount if they supposed they had no interest in the balance that might be saved out of the \$250,000 reserved? Or, why, on any other view, would they have objected to the paying

the whole \$250,000 directly to Georgia, without this needless arbitration?

But it has been urged, although the nation was not liable for property destroyed in war, either by the laws of nations, or by the treaties, made with Georgia or the United States, previously, yet by admitting the words "or destroyed" in the 4th article of the treaty of Indian Springs, they waived all former discharges and the law of nations, and revived and acknowledged the rights of the citizens of Georgia to be compensated for property "destroyed by them."

This rule of construction would be hard and it seems not altogether fair. The law of nations acquitted them of the responsibility of paying for property destroyed in war. No treaty contained any consent or obligation on their part to pay for it; but inferentially acquitted and discharged them. They had made large and repeated cessions of lands for which no consideration was expressed in the treaties, and which was, in every reasonable presumption, intended as indemnity and satisfaction for all property destroyed; that in existence they stipulated to restore. But above and beyond all this stands the fact, that General McIntosh, in his talk to the commissioners of Georgia, distinctly denied the claim and refused, as the Indians had done before, at Coleraine, to acknowledge his demand; and when the Indians stipulated to submit all the claims on both sides to the decision of the President, this denial, with all their talks on the subject, went as a part of the submission to that arbitrator; with all these facts before him, the President, to whose sole decision the treaty submitted the question, decided that the claim for property "destroyed" was untenable on every point on which it was resisted by the Indians; and in this he was most ably and conclusively sustained by the opinions of the Attorney General.

What then is the fair interpretation of the treaty as to the right to their balance? That the land ceded belonged to the Creeks there is no doubt; that it was fully worth the \$450,000 agreed to be paid for it there is no doubt. The commissioners proved this in their letter enclosing the treaty; that it did not belong to Georgia, nor was it due to her citizens, the President decided; and that it rightfully belonged to the Creek nation the Attorney General repeatedly and solemnly gave it as his opinion—[Opinions Attorney General, 622, 623]—and can any one doubt that such was the understanding of the Indians? If it was a part of the price of their land, left with the United States in trust, it was either to be applied to the trust for which it was left in the hands of the government, or to be returned to them. That they always so understood it, is clear from their declarations and the claims they have, from time to time, preferred for it. It may be asked why they did not make their claim earlier? They answer that they did so as soon as they knew the result of the commission, and repeatedly before Congress acted; that they had no notice of the sitting of the commissioners, and did not know when that proceeding was closed until some time after, when they immediately, through their agent, demanded the

money; that their nation was greatly agitated during the whole of this period, and a revolution occurred in 1825, which began by the killing of General McIntosh and the transfer of power to the party opposed to those who made this treaty, who, therefore, were not acquainted with its provisions, which will satisfactorily account for their not pressing their demand earlier and with more vigor. [See letter of John Crowell, agent, November 18, 1828. Appendix E and F.]

In coming to the conclusions which the committee have arrived at, they felt it their duty to look carefully into the provisions of the act of the 30th June, 1834, and the circumstances connected with its passage. The Creek nation never appear to have sanctioned or acquiesced in its provisions. That act provides (4 vol. Stat. at Large, 721) that the President be "authorized to cause to be adjusted and paid to full indemnity, out of any money in the treasury not otherwise appropriated, all claims of citizens of the State of Georgia under the 4th article of the treaty of the 8th January, 1821, between the United States and the Creek nation of Indians, which have not been heretofore adjusted and paid, on the following principles: All claims which have not been heretofore adjusted and paid, founded on the capture and detention or destruction of property by said Indians prior to the passage of the act regulating intercourse with the Indian tribes, if satisfactorily established, shall be allowed and paid."

The second clause also allowed interest on all claims that "have been or may be adjusted and established under the provisions of the aforesaid treaty, to be calculated from the date of the origin of the claims respectively up to the date of the adjustment and establishment of the claims respectively."

This act of Congress, in the opinion of the committee, is not authorized by the treaty. The only authority over this fund was that given in the treaty and the agreement between the Creek nation and the State of Georgia, and that was given to the President alone. This act not only assumed a jurisdiction not given, but established principles for adjudicating on the claims which reversed those established by President Monroe, to whom alone the Creek nation had agreed to submit the whole matter.

But, in executing the act, the committee find that even the provisions in it which might have afforded some protection to the rights of the Creek nation were not observed. The examination and adjustment of the claims under it was dispensed with, and the whole sum of \$141,055 91 was, it appears by the letter of William Medill, esq., of 26th June, 1848, paid, *in solido*, to Wilson Lumpkin, esq., governor of Georgia, on the 2d of March, 1835. In remarking on this and other payments, Mr. Medill says: "The aforesaid sums were paid, as will be seen, direct to the governor of the State, who distributed the same it is presumed among the claimants; but of this we have no positive information so far as at present ascertained, as upon the opinions of the Attorney General, dated December 20, 1834, (see book Attorney General's opinions,

983) and March 10, 1836, copy herewith, they were not required to make returns of their proceedings." [See appendix D.]

Under all these circumstances, it cannot be questioned that this balance belonged justly to the Creek nation, and that Congress assumed a jurisdiction, in reopening the award of President Monroe and prescribing new and different rules and regulations for adjudicating the claims, which was not warranted by the treaty of Indian Springs. The fund was a trust fund, and has not been applied to purposes for which the trust was created, and should be replaced and made good. The faith of treaties—the obligations resulting from the position of the United States as guardians and protectors of the Creek nation, which, as a minor or ward to them, the common principles of justice and right all demand that it should be done.

In coming to the conclusion that this balance has been wrongfully withheld from the Creek nation, and that it has been wrongfully paid away, there is a fact that it may not be unimportant to consider. The act of Congress of the 30th of June, 1834, provides for reopening these claims, and prescribes the rules which shall govern the re-examination; but it appears that instead of any re-examination by the President, the whole fund, *in solido*, was paid over to the State of Georgia, and that against the will of the Creek nation, and scarcely even in accordance with the terms of the act itself.

The committee further report, that the memorialists have presented in their application a claim for the payment of their proportion of one hundred thousand dollars, promised to the friends and followers of McIntosh, in the ninth article of the treaty of 24th January, 1826, made at Washington with the Creek nation, which they allege is due to a party of thirteen hundred, emigrated under charge of Luther Blake, in 1829. The proofs produced establish these facts: That, after the treaty, two or more parties of the followers of McIntosh were emigrated. (See Ex. Doc. H. Rep. No. 94, 1st sess. 21st Cong.) That the last party of these were enrolled and encamped in the Indian nation from some time in 1828 to 1829, and removed by Luther Blake in that year; and that they numbered thirteen hundred. [Appendix G.] It also appears, very conclusively, that although they were fully entitled to their proportion of the \$100,000, promised in the 9th article of the treaty of 24th January, 1826, that no part of it was paid to them. This is shown not only by the affidavits of Blake, the emigrating agent, and G. W. Stidham, one of the party, but is supported by the letter of the Hon. D. H. Lewis, all of which are submitted as part of this report. [Appendix G.] But this testimony is supported by another fact perfectly conclusive. [Appendix H.]

It appears, by the records of the department of Indian affairs, that these Indians emigrated at the time stated by Blake; that they numbered thirteen hundred. It also appears that no part of the appropriation of \$100,000 was paid after they emigrated, but that, on the 31st of December, 1828, and before they reached Arkansas, the whole balance of the appropriation, amounting to \$46,151.58, was

carried to the surplus fund, and remains in the treasury; and therefore the memorialists could not have received any part of it. [Appendix H.]

But the committee cannot omit here to state, that even this balance of \$46,151 58, carried to the surplus fund, is not the true balance, as it appears, by the answers of John M. McCalla, Second Auditor, of the 24th July, 1848, [Appendix G.,] and the papers accompanying it, that payments were made to John H. Brodnax, Joel Baley, and General Alexander Ware, to the amount of eighteen thousand one hundred and twenty-one dollars, sixty-two cents, properly chargeable to other appropriations in the act of 22d May, 1826. [St. at Large, 4th vol., 191.] And also, that \$20,726 80, properly chargeable to the appropriation in the same act of \$120,000, for carrying into effect the 6th, 7th, 8th, 10th, 11th, and 16th articles of the treaty of 24th January, 1826, were also erroneously charged on this fund of \$100,000. In fact, that there is no evidence that more than \$15,000 of it has been paid as the treaty stipulated, and the act of 22d May, 1826, appropriated it, but that \$38,848 42 has been misapplied, and the balance of \$46,151 58 was carried to the surplus fund, and is now in the treasury.

It is satisfactorily established that these thirteen hundred Indians were induced to relinquish their lands, sacrifice portions of their property, and emigrate to Arkansas, on the explicit pledges of the treaty and the promises of the agents of the United States; that they relied in full faith on these promises, and that they have not been fulfilled. Their fidelity and devotion to the United States brought on them the hostility and persecution of their countrymen, and finally exiled them from the land of their forefathers; and for the sacrifices, caused by their fidelity, they have not yet had the bare justice of indemnity that was guaranteed by treaty. The committee cannot see the justice or propriety of withholding it longer. The money that was promised and appropriated for them is yet in our treasury, requiring only a re-appropriation, which the committee now recommend in the bill herewith reported.

APPENDIX.

Documents accompanying this report.

- A.—Talks at Indian Springs.
- B.—Letter of commissioners, enclosing the treaty to Secretary of War.
- C.—Th. L. McKinney, Commissioner Indian Affairs, 18th January, 1828.
- D.—W. Medill, Commissioner Indian Affairs, 26th June, 1848.
- E.—Jno. Crowell, Creek agent, 18th November, 1828.
- F.—W. Medill, Commissioner Indian Affairs, 25th July, 1848.
- G.—L. Blake, G. W. Stidham, Hon. D. H. Lewis, and other documents.
- H.—Letter John M. McCalla, Second Auditor, 24th July, 1848.

A.

Copy of a talk delivered by the Georgia Commissioners to the Creek Indians.

INDIAN SPRINGS, Dec. 27th, 1820.

Brothers: Our head-man, the governor of Georgia, under the authority of our father the President, has sent myself, General Adams and General Newman, to meet you here to draw closer the bonds of friendship which our father, the President, hopes always will exist between his white and red children.

Brothers: In order that the chain of friendship may remain bright between the white and red people, it is necessary that they should do justice to each other. This the white people are always willing to do, and expect to meet the same friendly disposition among the red people, their brethren.

Brothers: Long before our father, the President, made a treaty with you, the head-men of Georgia and your nation talked together, and agreed to bury all differences and to have perpetual friendship. We wish these agreements to be fully and fairly complied with on the part of the red people, as they have been and will be on the part of the white people.

Brothers: Your head-men and warriors, at a treaty held at Augusta, a long while ago, then at a place called Galphinton, then at Shoulderbone, then at New York, then at Colerain, promised to restore all the property which had been taken from us by your people, and to make good the damages they had done us.

Brothers: Your friend, the governor of Georgia, has now sent us

here to lay this business before you, and to listen to what you have to say on the subject. The white people wish to be friends to the red people, and hope that, as good men on both sides, they can agree upon what is right.

Copy of second talk delivered by Georgia Commissioners to Creek Chiefs.

Dec. 28th, 1820.

Brothers: We now, agreeably to our promise of yesterday, lay before you a statement of the claims of the people of Georgia against your nation. These claims you have promised to adjust and settle, in all the several treaties which were mentioned to you yesterday.

This business has remained so long unsettled that an adjustment of it is necessary for the preservation of friendship between the white and red people.

Look at the accounts: they are proved according to the laws of our country, and we wish to hear what you have to say about them.

The President of the United States and the governor of Georgia expect the red people to do justice to the white people. They ask no more.

Copy of answer of the chiefs to the Georgia commissioners, delivered by General McIntosh.

He said he was glad to hear of the friendly disposition of the commissioners on the part of the State of Georgia; that he feels the same disposition himself, and will now proceed to answer them. He then observed, that two commissioners on the part of the President of the United States had delivered him the talk of the President, and he hoped the commissioners of Georgia and himself would be able to settle, amicably, all the differences between them; that he did not know he was called here to answer the claims of the State of Georgia, until he heard the talk of the state commissioners, on yesterday; that he had looked over the statement of claims exhibited by the commissioners of the State; that many items in the account he knew nothing about; that, thirty years ago, after General McGilvery held the treaty of New York, on his return to the nation, he informed the people that he had promised to deliver up all the prisoners and negroes belonging to the whites, then in the nation, but they were not to be liable for any that were dead or removed, and nothing was said about any other claims; that, shortly after the treaty of New York, another was held at Colerain, before which, some of the white and black prisoners were collected, principally, from the upper towns, and delivered to Major Seagrove, then the United States agent. At the treaty of Colerain, a

similar account with that now exhibited was presented by General James Jackson, and the chiefs then refused to acknowledge it, except so far as the items therein contained were embraced in the provisions of the treaty of New York, in which no other property is promised to be restored than negroes and prisoners. At the treaty at Colerain they promised to restore the stolen property in the nation; that, in conformity with the treaty of New York, they have collected and delivered to Colonel Hawkins a number of the negroes alluded to; that Colonel Hawkins, in all his talk, reminded them of the provisions of the treaty of New York, but never brought forward such a claim as the present one, nor did he insist on any compensation for damage done before the treaty of New York; that Colonel Hawkins once informed them that he had an account in favor of the people of Georgia, against the nation; that he never laid it before the nation, but said he had sent it to the President of the United States. These things all passed before he was a chief; since that, he has himself collected some, and delivered them up. During the late war, the British collected many of the negroes of the nation, and carried them off, but left some of them in a fort with a large quantity of arms and ammunition, and many of the negroes of the country joined them; he took his warriors and joined the American army under Colonel Clinch; attacked the fort, and blew it up. Many of the negroes were destroyed in it; those which remained were taken and delivered to Colonel Clinch for their owners. Some of the negroes yet remained in Florida, among the Seminoles. He joined General Jackson's army when it went down, and took some of them, which were reported to the United States agent, and some of them delivered; some of them remained there yet. If the President admits that country to belong to the Creek nation, he will take his warriors, go down, and bring all he caught, and deliver them up. He thinks the Creeks have complied with the treaties of New York and Colerain. If, however, any of the negroes remain in the nation, he will hunt them out and deliver them up, or pay for them. In looking over the accounts, he finds many trifling things, which he did not expect would be presented. The Indians have also many claims against the white people. He does not think this is the right way to settle them, but is willing to refer all the claims, on both sides, to his father and protector—the President of the United States. He observes, that no credit is given, upon the accounts exhibited, for the property which has been restored. When all the claims are exhibited and examined, he does not think there will be much difference between the Georgians and the Creeks. He will not say there is no property in the nation belonging to the Georgians, but he does not know of any; if there is any, he is willing to restore it, or pay its value: this is all he has to say. If two friends owe each other, they should not be too hasty in calling for pay, when the debtor is unable to pay; he is willing to pay whatever is just.

Copy of talk of Georgia commissioners to the Creek Indians.

DECEMBER 29, 1820.

BROTHERS: We have heard your talk of yesterday, and considered it over. The friendly disposition which it shows, leaves little doubt but that the friendship, which is so necessary to the prosperity of the white and red people, may be long preserved by a mutual disposition to do justice. We are, however, sorry to find that you do not consider yourselves bound to restore us the property, as well as the negroes taken or destroyed by your nation before the treaty of New York.

Brothers: we are sorry and surprised to hear that you were not fully informed of the object of this meeting. It has been so long known, that we had no doubt but that you were fully informed as to the business that we had with you.

Brothers: we, your friends, want nothing but what is right; but that we must insist on. You were bound to restore all property taken from us, even by the common rules of justice, if you had not agreed to do so by treaty; but in the treaty of Augusta, 37 years ago, you agreed to restore "all negroes, horses, cattle, or other property, taken since the late war." By the treaty of Galphinton, 35 years ago, you agreed to restore "all the negroes, horses, or other property, that might be among you, belonging to any citizen of this State." In the treaty of Shoulderbone, 34 years ago, you made the same promise in nearly the same words; and none of these promises have been fulfilled with good faith. By the treaty of New York, you promised to restore "all the negroes then in the nation belonging to the Georgians, to the commanding officer at Rock Landing;" and that has not been done. But even that treaty, though it mentioned nothing but negroes, could not discharge you from the obligations you were under to restore "all property" in the previous treaties. By the treaty of Colerain, you entered into the same obligation, and renewed the same promises which you made at Augusta, Shoulderbone, and Galphinton.

Brothers: knowing that some bad men live on our frontiers who are disposed to do mischief, we are not surprised to hear that you have claims against the white people which have not been exhibited. We, too, have claims which have not been exhibited to you; but which we have always intended to exhibit when a proper mode should be agreed on by which these respective claims should be adjusted. These claims have not been brought against you during the time of your troubles; but the people of Georgia have waited so long now to have these things settled that a speedy adjustment is absolutely necessary.

Brothers: we know or have heard of very few negroes having been returned or paid for, except runaways. Whilst a number which have been plundered, and have otherwise got into your nation, never have been accounted for. This state of things has already existed too long. As to the negroes that have been carried away by the British, or have been destroyed in any manner during the late war, we consider you responsible for such of them as be-

longed to the people of Georgia. If they had remained here they would have been safe; and it was your act, and not ours, that carried them to the scene of war; and our head-man, the governor of Georgia, has directed us to insist, according to the laws of our country, upon the restoration of a payment for the increase of all such negroes belonging to the people of Georgia as have increased, and an adequate reward for the use of such negroes and property as may not have increased.

Brothers: As to the negroes now remaining among the Seminoles, belonging to the white people, we consider those people (the Seminoles) a part of the Creek nation, and we look to the chiefs of the Creek nation to cause those people there, as well as the people of the upper towns, to do justice.

Brothers: We know that a final adjustment of these things is extremely difficult; and, for the purpose of avoiding all causes of animosity between us, who are neighbors and friends, we agree to your proposition to submit all our claims, on both sides, to our common father, the President, whose decision we will conform to on our parts, and hope there may never more be any cause of difference between us.

Brothers: It only now remains for us to repeat that we assent to the mode proposed by you for settling these differences; and accordingly will now present an agreement, to be entered into between us, which will put an end, we hope, to all discontents.

Articles of agreement entered into between the undersigned commissioners, appointed by the Governor of the State of Georgia, for and on behalf of the citizens of said State, and the chiefs, headmen, and warriors of the Creek nation of Indians.

Whereas, at a conference opened and held at the Indian Spring, in the Creek nation; the citizens of Georgia, by the aforesaid commissioners, have represented that they have claims to a large amount against the said Creek nation of Indians: Now, in order to adjust and bring the same to a speedy and final settlement, it is hereby agreed by the aforesaid commissioners, and the chiefs, headmen, and warriors of the said nation, that all the talks had upon the subject of these claims at this place, together with all claims on either side, of whatever nature or kind, prior to the act of Congress of 1802, regulating the intercourse with the Indian tribes, with the documents in support of them, shall be referred to the decision of the President of the United States, by him to be decided upon, adjusted, liquidated, and settled in such manner, and by such rules, regulations, and restrictions as he shall prescribe; provided, however, if it should meet the views of the President of the United States, it is the wish of the contracting parties that the liquidation and settlement of the aforesaid claims shall be made in the State of Georgia, at such place as he may deem most convenient for the parties interested; and the decision and award thus made and rendered shall be binding and obligatory on the contracting parties.

In witness whereof, we have hereunto set our hands and seals this eighth day of January, one thousand eight hundred and twenty-one.

Present: D. M. FORNEY,
D. MERIWETHER.

J. McINTOSH,
DAVID ADAMS,
DANIEL NEWMAN,
WILLIAM McINTOSH,
TUSTANNUGEE HOPOIE, his mark,
EFAU EMAUTHLAU, his × mark.

Whereas, a treaty or convention has this day been made and entered into by and between the United States and the Creek nation, by the provisions of which the United States have agreed to pay, and the commissioners of the State of Georgia have agreed to accept, for and in behalf of the citizens of the State of Georgia having claims against the Creek nation prior to the year one thousand eight hundred and two, the sum of two hundred and fifty thousand dollars: now know all men by these presents that we, the undersigned, commissioners of the State of Georgia, for and in consideration of the aforesaid sum of two hundred and fifty thousand dollars, secured by the said treaty or convention to be paid to the State of Georgia for the discharge of all bona fide and liquidated claims, which the citizens of the said State may establish against the Creek nation, do, by these presents, release, exonerate, and discharge the said Creek nation from all and every claim and claims, of whatever description, nature, or kind the same may be, which the citizens of Georgia now have, or may have had, prior to the year one thousand eight hundred and two, against the said nation; and we do hereby assign, transfer, and set over unto the United States, for the use and benefit of the said Creek nation for the consideration hereinbefore expressed, all the right, title, and interest of the citizens of the said State to all claims, debts, damages, and property, of every description and denomination, which the citizens of the said State have, or had prior to the year one thousand eight hundred and two, as aforesaid, against said Creek nation.

In witness whereof, we have hereunto affixed our hands and seals at the Mineral Spring, in the said Creek nation, this eighth day of January, one thousand eight hundred and twenty-one.

Present: D. M. FORNEY,
D. MERIWETHER.

D. B. MITCHELL,
Agent for the Indian Affairs.

J. McINTOSH,
DAVID ADAMS,
DANIEL NEWMAN.

B.

Copy of a letter from D. M. Forney and D. Meriwether, enclosing a treaty of the Creeks, concluded on the 8th January, 1821, also talks in relation thereto.

INDIAN SPRING, January 9, 1847.

SIR: We have the honor herewith to enclose a treaty with the Creek nation of Indians. In conformity with instructions we proposed to them a cession of country adjoining the Cherokee boundary, but found it impracticable to obtain such a cession at this time. As an inducement to a cession, we also proposed an exchange of territory, but were informed they were rather disposed to remain where they now are, and gradually turn their attention to husbandry, than cross the Mississippi in search of game; that they had made a law by which they who had abandoned their country in the pursuit of game, were deprived of all their rights in the Creek nation; but that in the event of any town or towns wishing to cross the Mississippi, the nation would be willing to give up their lands to the United States for lands there. With regard to the cession now made, so far as the wishes of the people of Georgia were to influence our conduct, (for whose benefit we were instructed this treaty was to be held,) we must believe that no tract of country of equal extent, within the Indian boundary, is as fertile or as desirable as the one now ceded. The only difficulty that has presented itself to our minds in the execution of this business, is the sum stipulated for the cession. We have endeavored to make this as easy as possible for the government, by the extension of the time of payment.

The quantity of land embraced in the cession, according to the most accurate calculations we have been able to make, falls but little, if any, short of 500,000 acres, for which, you will perceive by the treaty, we have engaged the government to pay \$450,000. But it is necessary to state, that the sum of \$250,000, set apart for the payment in full of the claims of the the citizens of Georgia against the Creek nation of Indians, must be considered more in the light of a nominal sum than an actual debt; for, from the partial investigation we have given this subject, we cannot believe these claims, on a fair settlement, will exceed \$100,000; and if they should be restricted to the stipulations of the treaties of New York and Coleraine, for which the Indians contend, the amount will be much lessened. Upon this point we forbear to express an opinion, as, under the articles of reference which accompany this, it is left with the President to decide upon matters touching these claims, in such manner and under such rules, regulations, and restrictions as he may prescribe. To enable you to judge more correctly on this subject, we enclose the substance of the communications between the commissioners of Georgia and the Indian chiefs; and for more particular information, we beg leave to refer you to General Mitchell, the agent, in whose possession the Indians will deposite a copy of a schedule containing nearly the

whole of these claims, collected and embodied under an act of the Legislature of Georgia. But independent of this consideration, we believe the whole amount would only be a fair and reasonable consideration for the cession. The annuities were arranged so as to meet the wishes of the nation, communicated to us through the agent, General Mitchell. In order to comply in some degree with the expectations of the chiefs, which had been improperly and unreasonably excited, we found ourselves compelled to make a payment in hand, or to swell another item in the article of expenditures, which to us was extremely odious and objectionable.

C.

[From Doc. No. 128, 20th Congress, 1st session.]

DEPARTMENT OF WAR,
Office of Indian Affairs, January 18, 1828.

SIR: In obedience to your directions to report to you such information as the records of this office may contain, and whatever else may be applicable to the letter of the 9th instant, from the Hon. Wm. McLean to you, in which he asks:

First. "Has the amount due to the citizens of Georgia (as provided to be paid by the fourth article of the treaty with the Creek Indians, and the agreement appended thereto of the 8th of January, 1821) been ascertained according to the fourth article of the treaty?"

Second. "How much has been paid?"

Third. "Has interest in any instance been allowed?"

Fourth. "Has the increase of the female slaves been in any instance allowed?"

Fifth. "Is any act of legislation on the part of Congress necessary to enable the President to act, or to enable the citizens of Georgia to obtain their just claims?"

To submit copies of instructions to the commissioners appointed to carry into effect the provisions of the fourth article of the treaty aforesaid, and of certain letters to the then governor of Georgia.

Under the commission aforesaid, the amount due the citizens of Georgia was ascertained, and the whole amount, as reported under said commission, has been paid. No interest was allowed, nor was the demand for the value of the increase of female slaves admitted.

The commission has been closed by the final award, and the instalments all paid, amounting altogether to \$101,319 22.*

If it is deemed proper to open it, it is presumed it may require legislative provision to that end; as, also, for such provision as it may be esteemed proper to make for cases not recognised in the

*The amount paid was \$108,944 09, as appears by letter of Wm. Medill, esq., Commissioner of Indian Affairs.—[See appendix D.]

instructions under which the commissioner acted, and those embrace interest and the increase of female slaves, &c.

Respectfully submitted.

THO. L. MCKENNEY.

To Hon. JAMES BARBOUR,
Secretary of War.

D.

WAR DEPARTMENT,
Office Indian Affairs, June 26, 1848.

SIR: I have the honor to return the papers left by you at this office on Saturday last, and, in reply to your inquiry, state that on an examination of the books in the office of the Second Auditor, it is found (in reference to the claims of the citizens of Georgia under the Creek treaty of 1821) that the whole sum of \$250,000 was paid to the State of Georgia, under the acts of appropriation of 3d March, 1821, 7th May, 1822, 26th May, 1824, 20th May, 1826, and 30th June, 1834, as follows, viz:

On 27th June, 1822.....	Gov. John Clark.....	\$17,740 72
17th March, 1823.....	do.....	17,740 73
5th May, 1823.....	do.....	639 20
11th October, 1823.....	do.....	3,823 44
15th June, 1824.....	Gov. G. M. Troupe....	23,000 00
16th March, 1825.....	do.....	23,000 00
15th June, 1826.....	do.....	23,000 00
2d March, 1835.....	Gov. W. Lumpkin.....	141,055 91
Making.....		<u>\$250,000 00</u>

The aforesaid sums were paid, as will be seen, direct to the governors of the State, who distributed the same, it is presumed, among the claimants, but of this we have no positive information so far as at present ascertained; as upon the opinions of the Attorney General, dated 20th December, 1834, (see book of Attorney General's opinions, page 983,) and 10th March, 1836, copy herewith, they were not required to make returns of their proceedings.

Very respectfully, your obedient servant,

W. MEDILL.

Hon. JACOB THOMPSON,
of the Committee on Indian Affairs,
House of Representatives.

ATTORNEY GENERAL'S OFFICE,

March 10, 1836.

SIR : The advances to the governors of Georgia under the acts of the 3d of March, 1821, 7th of May, 1822, 26th of May, 1824, and the 20th of May, 1826, referred to in your communication of the 16th ultimo, were no doubt made to them as the representatives and rightful agents of the *State of Georgia*, to which, by the treaty of 1821, the moneys in question were to be paid. The payment of the money to these officers was, to the extent of the funds which came to their hands, a discharge of the engagement entered into by the United States, who were not bound to see the application of the moneys so paid. For the like reason, they have no right, in my opinion, to require an account of the disposition of those moneys.

I have the honor to be, very respectfully, your obedient servant,
B. F. BUTLER.

The letter of the Second Auditor is returned.

E.

Copy of letter of John Crowell, agent Creek Indians, to the President of the United States.

WASHINGTON CITY, November 18, 1828.

SIR : The chiefs of the Creek nation having learned that the ascertained claims of the citizens of Georgia fell short of the sum set apart for that purpose, by the treaty of Indian Springs, of 1821, charged me to demand the payment to them of the surplus of that provision.

In conformity to their wishes, I did make application to the late Secretary of War. No decision having been made by that officer, I have again been urged by the chiefs to renew the application. I have felt it a duty, which, as agent, I owe this people, and one which their extreme poverty and wretchedness make the more binding, to have the subject looked into, in order that the meaning and intent of the treaty may be carried fully and justly into effect; and feeling my own incompetency to enter into an exposition of the instrument on which the Indian claim rests, I have procured for them the opinion of General Walter Jones, which seems to me to place the subject in so clear a point of view, that no doubt exists as to the justness of the Indian claim to that balance; all of which is herewith respectfully submitted.

I have the honor to be, your obedient servant,

JNO. CROWELL,

Agent for Creek nation.

To the PRESIDENT OF THE UNITED STATES,
Washington city.

F.

HOUSE OF REPRESENTATIVES, *July 29, 1848.*

SIR: You will oblige the Committee on Indian Affairs of the House of Representatives by furnishing them with copies of such documents or letters, received by your committee from officers of the government, having relation to the claims of the Creek nation of Indians, now pending before Congress.

Very respectfully, your obedient servant,

D. M. BARRINGER.

Hon. D. R. ATCHISON,
Chairman, &c.

SENATE CHAMBER, *July 29, 1848.*

SIR: I herewith transmit you copies of the papers asked for in your letter of this date.

Very respectfully, your obedient servant,

D. R. ATCHISON.

Hon. D. M. BARRINGER,
Chairman Committee on Indian Affairs.

WAR DEPARTMENT,
Office Indian Affairs, July 26, 1848.

SIR: Your letter of the 22d instant, desiring to be informed if any notice was extended to the Creek Indians of the appointment of either James P. Preston or Stephen Pleasonton, esq., as commissioners under the 4th article of the treaty of Indian Springs, of 8th of January, 1821; if they were notified of the times and places of holding such commission, or that the Creek Indians were present personally, or by council, at the investigation of such claims; also, if any notice was given to said Indians of the awards made by said commissioners, or either of them, or the President, and when the said notice was given, has been received; and, in reply, I have the honor to state that I can find nothing upon the files or records of this office which will enable me to comply with your request, so far as the interrogatories above referred to are concerned.

With reference to the question, "if any demands or claims have ever been made by Jno. Crowell, esq., agent, or any other person, on behalf of the Creek nation itself, of the \$250,000, or any part of it," which was reserved in the said 4th article, I have to state that the only evidence in possession of this office touching the demand made by Mr. Crowell will be found in vol. 2, State Papers, House of Representatives, United States, 2d session, 20th Congress, document No. 80, p. 2. The accompanying extract from a communication of the Creek chiefs to the Secretary of War, of 4th September, 1835, and one from a memorandum of a talk with the Creek chiefs

by Colonel Hitchcock, United States army, enclosed by him in his letter to the Secretary of War, May 30, 1842, embrace all the information which has been elicited from the files, relating in any way to this latter inquiry.

Very respectfully, your obedient servant,

W. MEDILL.

Hon. D. R. ATCHISON,

Chairman Committee on Indian Affairs,
Senate United States.

Extract from a "talk" with Creek Indians, endorsed by Col. E. A. Hitchcock, in his report to the Secretary of War, May 30, 1842.

"Another claim is this: a number of years ago, at Mineral Springs, the Creeks made a treaty with the United States, selling a portion of their country to pay certain claims of Georgia people against the Creek nation; and the balance of the money, set apart for the payment of those claims, it was understood was to be paid over to the Creek nation, but it has never been paid."

Extract from a communication of Creek chiefs to Secretary of War, September 4, 1835.

"On the subject of a balance due the Creek nation, under the treaty made at the Indian Springs, 1821, by Forney and Meriwether, we wish some information whether there is a probability of the nation ever receiving pay."

G.

CREEK AGENCY, July 16, 1829.

SIR: By authority in me vested, by the Secretary of War, I do hereby appoint you the acting agent for the western Creek nation, from the date of your arrival in said nation, with the party of Creek emigrants under your charge, until my arrival at the agency.

JNO. CROWELL,

Agent for J. A.

TO LUTHER BLAKE.

TREASURY DEPARTMENT,

Second Auditor's Office, July 28, 1848.

I certify the above to be a true copy of a copy on file in this office.

J. M. McCALLA,

Second Auditor.

TREASURY DEPARTMENT,
Second Auditor's Office, July 29, 1848.

SIR: Your letter of the 28th instant, asking to be informed what number of Creek Indians were emigrated by Colonel John Crowell, in the year 1829, has been received. In reply thereto, I have the honor to state that, by letter from this office of 12th April, 1830, to the Secretary of War, the number is stated at thirteen hundred, (1,300.)

After diligent search, no such rolls as referred to by you can be found in this office.

I have the honor to be, very respectfully, your obedient servant,

J. M. McCALLA.

Hon. D. R. ATCHISON, *Senate.*

DISTRICT OF COLUMBIA, }
County of Washington, } ss.

Before me, John D. Clark, a justice of the peace, in and for the county aforesaid, this day personally appeared Luther Blake, who, being duly sworn, made the following statement:

That in the latter part of 1827, and beginning of 1828, the friends and followers of General William McIntosh, who were promised \$100,000 by the 9th article of the treaty of Washington, as a consideration for emigrating west of the Mississippi, commenced removing. Two parties, less in number than two thousand, went under charge of Colonel David Brearly, agent of the McIntosh party.

After the emigration of these, a third party was enrolled for emigration, under the direction of Colonel Brearly, who were assembled in the latter part of 1828, in camp in the Creek nation, where they were kept for about eight months before removal. They were detained, as I understood, in consequence of a want of funds to remove them. Colonel Brearly came to Washington, leaving the Indians in charge of his deputies. The department at Washington did not send Colonel Brearly back, but directed Col. John Crowell, Creek agent, to put the emigrating Creeks under charge of a deputy agent, to remove them to Arkansas. Colonel Crowell appointed this deponent to perform that service. I was directed to enrol all others willing to go, and directed also to promise each one emigrating a full and fair proportion of the one hundred thousand dollars agreed to be paid to them, for emigration, by the treaty of Washington.

The sum to be paid each one was stated to be thirty-three and a third dollars, besides blankets, rifles, beaver traps, axes, knives, &c., &c.

The party thus emigrating under me numbered about thirteen hundred. I was with them before they removed, and until after

they arrived at Arkansas, and remained with them twelve months as their acting agent. It is known to me that they received no part of the \$100,000 during that time, nor do I believe they have received a cent of it to this day. I have so understood repeatedly.

I know that the promises made to them, that this money would be paid to them on their arrival in Arkansas, was implicitly relied on, and induced them cheerfully to surrender their lands, and sell off their property which could not be removed, and go to the west. I know also that, in the sale of their property, losses were sustained in not getting for it anything like its value.

This deponent, during the year, returned to Washington, to urge the claim of these 1,300 Indians for their head money. The department admitted they were entitled, but said it had no more money for the purpose; but that there was little doubt Congress would appropriate enough to pay each one what he was entitled to.

The deponent was authorized to distribute amongst them the rifles, blankets, &c., which was done, and also to purchase iron and axes, and distribute them, which was done.

LUTHER BLAKE.

Sworn to and subscribed before me, this 21st day of July, 1848.

JOHN D. CLARK, *Justice Peace.*

DISTRICT OF COLUMBIA, County of Washington:

Personally appeared before me, John L. Smith, one of the justices of the peace for the county of Washington aforesaid, Geore W. Stidham, one of the delegates of the Creek nation, now in Washington, and also one of the thirteen hundred Creek Indians who emigrated, in 1829, under the 9th article of the treaty of Washington, of 24th January, 1826, and makes oath: That he was one of the party of the friends and followers of General McIntosh, who were enrolled, and emigrated, in 1829, to the west of the Mississippi; that this was the third and last part of the McIntosh party emigrated under the 9th article of the treaty of 24th January, 1826; that he and the others were induced to enrol their names and emigrate on the repeated and solemn promise of being paid, on arriving in Arkansas, their full and fair shares of the one hundred thousand dollars promised in that part of the treaty; that, to comply with the obligation of removal, many of them sold considerable amounts of cattle, hogs, poultry, household and farm furniture, &c., &c., at far below their value, and made sacrifices, in many respects, both of property and feelings.

This deponent further declares, on oath, that, on their arrival in Arkansas, they received no part of the one hundred thousand dollars promised them, nor has any part of it been paid to them since. This fact is well known to this deponent.

G. W. STIDHAM.

Subscribed and sworn to, this 21st day of July, 1848, before
J. L. SMITH, J. P.

SENATE CHAMBER, July 24, 1848.

SIR: At the request of the Creek Indian delegation now in this city, I state that in 1829 I saw the party of Creek Indians, known as the friends and followers of General McIntosh, on their way to the west of the Mississippi, under the lead of Luther Blake. They camped in the vicinity of my residence, and I was much among them for a day or two. I do not recollect their exact number, but suppose there were about thirteen hundred, the number stated by Blake.

After the return of some Indian countrymen, (whites,) who had gone out with the emigrating party to their abode west of the Mississippi, I was told, in reply to inquiries how they liked their new homes, that they were very much dissatisfied with the country and the government, as they had been promised a certain sum of money *per capita*, a rifle, and several other articles, which they did not receive on their arrival. I recollect to have heard, afterwards, that they received their rifles, &c., but never heard that the money promised them had been paid.

I am, very respectfully, your obedient servant,

DIXON H. LEWIS.

Hon. DAVID R. ARCHISON,

Chairman of the Committee on Indian Affairs of the Senate.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
July 24, 1848.

SIR: In your letter of this date you desire to be informed "to whom, and at what times, was the \$100,000 promised the friends and followers of McIntosh by the 9th article of the treaty of Washington, made with the Creek Indians in January, 1826, paid; and what evidence has the department of its disbursement to the Indians."

The committee has already been furnished with an extract from the report of my predecessor, Mr. Crawford, to the Secretary of War, on the 26th July, 1843, in which the fact is stated that the amount was paid; but the evidence of payment, and when and to whom it was paid, is on file with the accounts in the Second Auditor's office.

There is nothing in this office to enable me to identify who, of the emigrant Creek Indians, were known as "the friends and followers of McIntosh, and their numbers;" what portion of them were emigrated under charge of Luther Blake, and when; or to ascertain whether any portion of the \$100,000 was paid to the latter, &c. This information can be obtained only from the rolls, accounts, and vouchers on file in the Auditor's office, and hence I have been compelled to refer your letter to that officer.

Very respectfully, your obedient servant,

W. MEDILL.

Hon. D. R. ARCHISON,

Chairman Committee on Indian Affairs.

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE,

July 24, 1848.

SIR: In reply to your letter of this date, inquiring "how and in what manner the \$100,000 provided to be paid to the friends and followers of General McIntosh by the ninth article of the treaty of the 24th January, 1826, between the United States and the Creek tribe of Indians, was paid?" I beg leave to state that it appeared to have been drawn from the treasury as follows, viz: On the 24th of May, 1826, by David Brearly, \$15,000; on 31st May, 1827, by Joel Baley, \$5,564 75; on 2d June, same year, by John H. Brodnax, \$1,821 25; and on the 2d January, 1828, by General Alexander Ware, \$10,735 62; making altogether the sum of \$33,121 62.

It likewise appears, that, in addition to the above, \$20,726 80 was expended in carrying into effect the stipulations of the 6th, 7th, 8th, 10th, 11th, and 16th articles, and in defraying other expenses attending the provisions of this treaty, and the balance of \$46,151 58, which makes up the amount of \$100,000 appropriated, was carried to the surplus fund on the 31st December, 1828.

Very respectfully, your obedient servant,

JOHN M. McCALLA,
Second Auditor.

Hon. D. R. ARCHISON,
U. S. Senate.

APPROPRIATION.

No. 5,316.

To carry into effect Creek treaty, per act 22d May, 1826
\$1,821 25.

TREASURY DEPARTMENT,
Second Auditor's Office, June 2, 1827.

I certify that there is due from the United States to John H. Brodnax, the sum of \$1,821 25, being the amount of his account for provisions and forage furnished the friends and followers of the late General McIntosh, between the 3d of May, 1825, and 31st of October, 1825, allowed him in pursuance of the decision of the Secretary of War, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

W. LEE, Second Auditor.

To RICHARD CUTTS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above this 2d day of June, 1827.

RICHARD CUTTS,
Second Comptroller.

TREASURY DEPARTMENT,
Second Auditor's Office, July 24, 1848.

I certify the within to be a true copy of the original on file in this office.

JOHN M. McCALLA,
Second Auditor.

• APPROPRIATION.

No. 5,311.

To carry into effect Creek treaty, per act 22d May, 1826,
 \$5,564 75.

TREASURY DEPARTMENT,
Second Auditor's Office, May 31, 1827.

I certify that there is due from the United States to Joel Baley, the sum of \$5,564 75, being the amount of his account for provisions and forage furnished the friends and followers of the late General McIntosh, between the 17th July, 1825, and the 19th June 1826, allowed him in pursuance of the decision of the Secretary of War, and to be paid to Bollin Smith, in virtue of a power of attorney filed in this office, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

WM. LEE, *Second Auditor.*

To RICHARD CUTTS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above this 31st day of May, 1827.

RICHARD CUTTS,
Second Comptroller.

TREASURY DEPARTMENT,
Second Auditor's Office, July 24, 1848.

I certify the within to be a true copy of the original on file in this office.

JOHN M. McCALLA,
Second Auditor.

APPROPRIATION.

No. 5,869.

For carrying into effect 6th, 7th, 8th, and other articles of the late Creek treaty, per act 22d May, 1826, \$10,735 62.

TREASURY DEPARTMENT,
Second Auditor's Office, December 31, 1837.

I certify that there is due from the United States to General Alexander Ware, of Georgia, the sum of \$10,735 62, being the

amount of his account for provisions issued by him to the destitute Creek Indians of the McIntosh party, from the 25th of August, 1825, to the 20th August, 1826, allowed him in pursuance of the decision of the Secretary of War, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

W. LEE, *Second Auditor.*

To RICHARD CUTTS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above this 2d day of January, 1828.

RICHARD CUTTS.

Second Comptroller.

TREASURY DEPARTMENT,
Second Auditor's Office, July 24, 1848.

I certify the within to be a true copy of the original on file in this office.

JNO. M. McCALLA,
Second Auditor.

DEPARTMENT OF WAR,
Office of Indian Affairs, May 28, 1827.

SIR: I have examined the report of Thomas M. Randolph, esq. on the claim of Joel Baley, for supplies issued to the friends and followers of the late General McIntosh, of the Creek nation, which was referred to him by your order. Mr. Randolph, after assigning his reasons at length, expresses his opinion in favor of the claim in the following words: "I conclude with declaring myself to be decidedly of the opinion, and as a juror I should concur in such a verdict in a similar case, that *Colonel Baley's claim ought to be paid forthwith*, at the prices charged and by the accounts rendered, leaving to the proper officers the rectification of his statements and the arithmetical results which it becomes me not to make, although it would take me but a few minutes to do it."

I have the honor, therefore, to recommend that the report of Mr. Randolph be approved, and that the claim of Joel Baley be referred to the Second Auditor, to be settled according to the opinion which Mr. Randolph has expressed thereon in his report, and that the amount found due on such settlement be charged to the appropriation per act 22d May, 1826, for carrying into effect the stipulations of the 6th, 7th, 8th, and other articles of the Creek treaty.

Very respectfully, sir, I have the honor to be, your most obedient servant,

SAML. S. HAMILTON.

HON. JAS. BARBOUR,
Secretary of War.

Let it be done.

J. B.

TREASURY DEPARTMENT,
Second Auditor's Office, July 24, 1848.

I certify the within to be a true copy of the original on file in this office.

JOHN M. McCALLA.
Second Auditor.

Extract of report of T. Hartley Crawford, Commissioner of Indian Affairs, dated July 26, 1843.

"The treaty of 1825 was declared to be null and void by that of 1826. The 9th article of the latter provided that, in consideration of the exertions used by the friends and followers of General McIntosh, to procure a cession of the Indian Spring, and of their *past difficulties and contemplated removal*, the United States would present to the chiefs of the party, to be divided among the chiefs and warriors, \$100,000, if the party should amount to 3,000, and in that proportion for any smaller number, of which \$15,000 were to be paid immediately after the ratification of the treaty, and the residue on their arrival west. The restriction to 3,000 emigrants was removed by the law of 26th May, 1826, and payments under this article authorized to any number over and above said limit.

"This sum was paid; for, on 26th June, 1834, a law was passed appropriating \$11,160, to be distributed to the Creek Indians, friends and followers of General McIntosh, who emigrated under the treaty of 12th January, 1826, 'and who have not received the proportions of the sums stipulated to be paid under the 9th article of the said treaty.' The same law contained an appropriation of \$5,136 93 'for the payment of claims ascertained, upon settlement, to be due for provisions and bounty money, for Indians emigrating west under the treaty with the Creeks.' "

H.

Copy of a letter of Jno. M. McCalla, esq., Second Auditor, to the Hon. D. R. Atchison, chairman of the Committee on Indian Affairs, of the Senate.

TREASURY DEPARTMENT,
Second Auditor's Office, July 24, 1848.

SIR: In reply to your letter of this date, inquiring "how and in what manner the \$100,000 provided to be paid to the friends and followers of Gen. McIntosh, by the ninth article of the treaty of the 24th January, 1826, between the United States and the Creek tribe of Indians, was paid?" I beg leave to state, it appears to have been drawn from the treasury as follows, viz: on the 24th of

May, 1826, by David Brearly, \$15,000; 31st of May, 1829, by Joel Baley, \$5,564 75; 2d of June, same year, by John H. Brodnax, \$1,821 25, and on the 2d of January, 1828, by Gen. Alex. Ware, \$10,735 62, making altogether the sum of (thirty-three thousand one hundred and twenty-one dollars and sixty-two cents) \$33,121 62.

It likewise appears that, in addition to the above, \$20,726 80 was expended in carrying into effect the stipulations of the sixth, seventh, eighth, tenth, eleventh, and sixteenth articles, and in defraying other expenses attending the provisions of this treaty, and the balance, \$46,151 58, which makes up the amount of \$100,000 appropriated, was carried to the surplus fund on the 31st of December, 1828.

Very respectfully, your obedient servant,

JNO. M. McCALLA,
Second Auditor.

Hon. D. R. ARCHISON,
United States Senate.